

CITY OF TIGARD, OREGON

ORDINANCE NO. 2005- 09

AN ORDINANCE ANNEXING 6.94 ACRES, APPROVING MOUNTAIN VIEW ESTATES ANNEXATION (ZCA2004-00004), AND WITHDRAWING PROPERTY FROM THE TIGARD WATER DISTRICT, WASHINGTON COUNTY ENHANCED SHERIFF'S PATROL DISTRICT, WASHINGTON COUNTY URBAN ROADS MAINTENANCE DISTRICT, WASHINGTON COUNTY STREET LIGHTING DISTRICT #1, AND THE WASHINGTON COUNTY VECTOR CONTROL DISTRICT.

WHEREAS, the City of Tigard is authorized by ORS 222.120(4)(B) and 222.170 to initiate an annexation upon receiving consent in writing from a majority of the electors registered in the territory proposed to be annexed and written consent from owners of more than half the land in the territory proposed to be annexed; and

WHEREAS, the City of Tigard is authorized by ORS 222.120(5) and 222.520 to withdraw properties which currently lie within the boundary of the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District upon completion of the annexation; and

WHEREAS, the Tigard City Council held a public hearing on August 9, 2005 to consider the annexation of two (2) parcels of land consisting of 6.94 acres and withdrawal of said property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, the City Council left the record open for written submissions for an additional seven days after the hearing on August 9, 2005 and allowed a further seven days on August 23, 2005 for submission of responses to new evidence submitted during that time, as provided by ORS 197.763(6)(c); and

WHEREAS, pursuant to ORS 222.520(2) the City is liable to the Water District for certain debt obligations, however, in this instance the Water District has no debt for the City to assume, therefore, no option regarding the assumption of debt needs to be made; and

WHEREAS, pursuant to Metro 3.09, ORS 222.120 and 222.524, notice was given and the City held a public hearing on the issue of the annexation into the City and withdrawal of the annexed property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.524, the City must declare the withdrawal of annexed properties from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District by Ordinance; and

WHEREAS, the Tigard Development Code states that upon annexation, the zone is automatically changed to the City zoning most closely conforming to the County zoning; and

WHEREAS, the current zoning district is R-7, an existing City zone that has been adopted by the County and the zoning after annexation would remain R-7 so that no zone change is necessary, and by annexation the Comprehensive Plan of the City of Tigard goes into effect; and

WHEREAS, the annexation has been processed in accordance with the requirements of Metro 3.09 and has been reviewed for compliance with the Tigard Community Development Code and the Comprehensive Plan and the annexation substantially addresses the standards in Metro 3.09 regulating annexations; and

WHEREAS, the City Council has carefully considered the testimony at the public hearing and the written materials submitted after the hearing and determined that withdrawal of the annexed properties from the applicable service districts is in the best interest of the City of Tigard.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The Council adopts the staff report and the document entitled "Supplemental Finding Concerning Compliance with ORS Chapter 222" as findings. In addition, Council adopts the document entitled "Findings in Response to Comments" as additional findings of fact.

SECTION 2: The Tigard City Council hereby annexes the parcels described in the attached **Exhibit "A"** and shown in **Exhibit "B"** and withdraws said parcels from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District.

SECTION 3: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor and posting by the City Recorder.

SECTION 4: City staff is directed to take all necessary measures to implement the annexation, including filing certified copies of the Ordinance with Metro for administrative processing, filing with state and county agencies as required by law, and providing notice to utilities.

SECTION 5: Pursuant to ORS 222.120(5), the effective date of the withdrawal of the property from the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District shall be the effective date of this annexation.

SECTION 6: Pursuant to ORS 222.465, the effective date of the withdrawal of this property from the Tigard Water District shall be July 1, 2006.

SECTION 7: In accordance with ORS 222.180, the annexation shall be effective upon filing with the Secretary of State.

PASSED: By Unanimous vote of all Council members present after being read by number and title only, this 13th day of September, 2005.

Catherine Wheatley
Cathy Wheatley, City Recorder

APPROVED: By Tigard City Council this 13th day of September, 2005.

C. A. D.
Craig Dirksen, Mayor

Approved as to form:

Timothy V. Kenna
City Attorney

9.13.05

Date

**Mountain View Estates
ZCA2004-00004**

Legal Description for Annexation

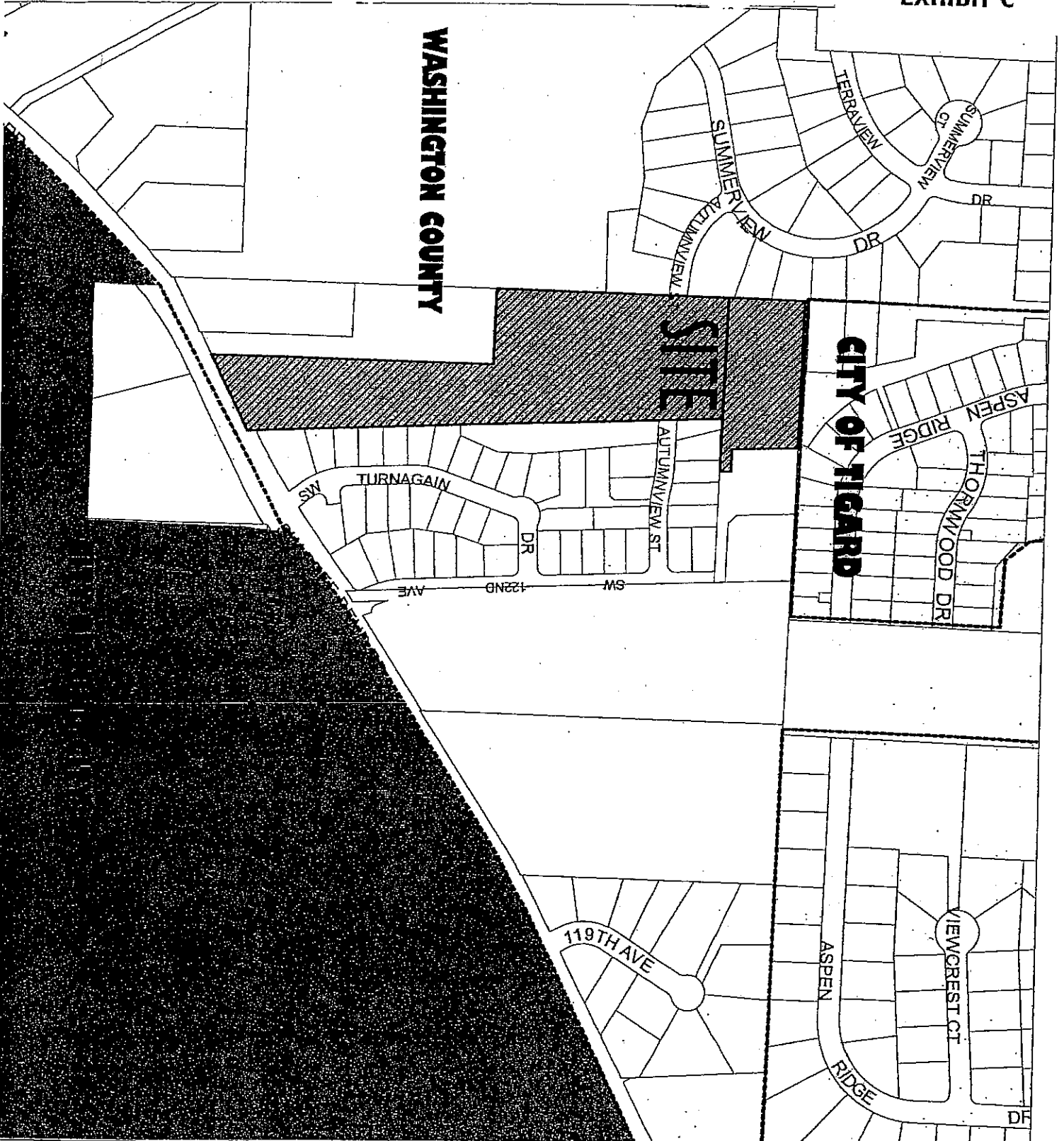
COMBINED TAX LOTS 2S110CB-00100 and 2S110CB-00500

Owners: Dwight C. Minthorne and Karla Minthorne (T.L. 500)
Owners: Richard R Wright and Diane M. Wright (T.L. 100)

A tract of land in Section 10, Township 2 South, Range 1 West of the Willamette Meridian in Washington County, State of Oregon and being more particularly described as follows:

Commencing at the West quarter corner of Section 10, Township 2 South, Range 1 West of the Willamette Meridian, in the County of Washington, State of Oregon, said point also being the Initial Point; thence, South $89^{\circ}58'17''$ E a distance of 333.50 feet along the South line of "Thornwood", a recorded subdivision in Washington County Survey Records; thence, South $03^{\circ}15'00''$ East a distance of 175.10 feet along the West line of that tract of land described in Document Number 99111751, Washington County Deed Records to the North line of "Turnagain Heights", a recorded subdivision in Washington County Survey Records; thence, North $89^{\circ}55'03''$ West a distance of 70.73 feet along the North line of said "Turnagain Heights" to the Northwest corner of said subdivision; thence, South $03^{\circ}30'35''$ East a distance of 1076.57 feet along the West line of said "Turnagain Heights" to the North line of S.W. Beef Bend Road, County Road Number A-148; thence, along said North line, along a curve to the left having a radius of 1467.00 feet through a central angle of $00^{\circ}50'44''$, the long chord of which bears S $61^{\circ}57'56''$ W a distance of 21.65 feet; thence, along said line, South $62^{\circ}23'18''$ West a distance of 161.60 feet along said North line; thence, along said North line, along a curve to the right having a radius of 858.00 feet through a central angle of $00^{\circ}22'39''$, the long chord bears South $62^{\circ}11'59''$ West a distance of 5.65 feet to the West line of that tract of land described in Document Number 78044753, Washington County Deed Records; thence, North a distance of 629.34 feet along said West line to the Northeast corner of said tract of land; thence, West a distance of 171.29 feet along the North line of said tract of land to the East line of that tract of land described in Document Number 2004-032242, Washington County Deed Records; thence, North a distance of 707.80 feet along the East line of said tract of land and the East line of "Arlington Heights No. 2", a recorded subdivision in Washington County Survey Records to the Initial Point.

Contains 302,171 square feet, 6.94 acres, more or less.



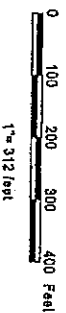
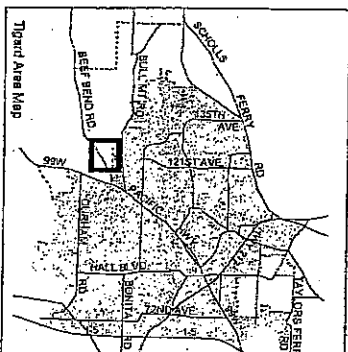
CITY OF TIGARD

GEOGRAPHIC INFORMATION SYSTEM

VICINITY MAP

ZCA2004-00004

MOUNTAIN VIEW
ESTATES SUBDIVISION
ANNEXATION



Information on this map is for general location only and should be verified with the Development Services Division

13125 SW Hall Blvd

Tigard, OR 97223

(503) 639-4171

Updated: 10/1/2004

Agenda Item: 7

Hearing Date: August 9, 2005 7:30 PM

**STAFF REPORT TO THE
CITY COUNCIL
FOR THE CITY OF TIGARD, OREGON**



SECTION I. APPLICATION SUMMARY

FILE NAME: MOUNTAIN VIEW ESTATES ANNEXATION
CASE NO.: Zone Change Annexation (ZCA) ZCA2004-00004

AGENT: Lan Pacific
Attn: Brian Keefer
1001 SE Water Ave., #360
Portland, OR 97214
APPLICANT: Sean Foushee
Accent Homes
12583 SW Autumnview St.
Tigard, OR 97223

OWNERS: Dwight C. and Karla Minthorne
12415 SW Beef Bend Road
Tigard, OR 97224
Richard and Diane M. Wright
15350 SW Beef Bend Rd
Tigard, OR 97224

PROPOSAL: The applicant applied for approval to subdivide property on Beef Bend Road, known as Mountain View Estates. The subdivision's approval included a condition of approval requiring annexation. The applicant has applied for annexation of 6.94 acres.

**CURRENT
ZONING
DESIGNATION:** R-7, Medium Density Residential.

**EQUIVALENT CITY
ZONING
DESIGNATION:** R-7, Medium Density Residential. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.

LOCATION: 12415 SW Beef Bend Road, WCTM 2S110CB, Tax Lot 500.
No Site Address, WCTM 2S110CB, Tax Lot 100.

**APPLICABLE
REVIEW
CRITERIA:** Community Development Code Chapters 18.320 and 18.390;
Comprehensive Plan Policies 2 and 10; Metro Code Chapter 3.09; and
ORS Chapter 222.

SECTION II. STAFF RECOMMENDATION

Staff recommends that the Council find that the proposed annexation will not adversely affect the health, safety and welfare of the City. Therefore, staff recommends **APPROVAL** of the annexation by adoption of the attached ordinance.

SECTION III. BACKGROUND INFORMATION

Site Information and Proposal Description:

Lan Pacific, representing Accent Homes applied for approval to subdivide property on Beef Bend Road, known as Mountain View Estates. A condition of that subdivision approval required annexation prior to recording the final plat. Accordingly, the applicant applied for annexation of the two parcels that comprised the subdivision. The total area represented is 6.94 acres and is contiguous to the present city limits along the northern property boundary.

Vicinity Information:

The subject parcels are located north of SW Beef Bend Road, south of Thomwood subdivision, and west of Turnagain Heights.

SECTION IV. APPLICABLE REVIEW CRITERIA AND FINDINGS

The relevant criteria in this case are Tigard Comprehensive Plan Policies 2.1.1, 10.1.1, 10.1.2, and; Tigard Community Development Code Chapter 18.320.

Staff has determined that the proposal is consistent with the relevant policies of the Comprehensive Plan based on the following findings:

Comprehensive Plan

Policy 2.1.1: The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process.

This Policy requires an ongoing citizen involvement program. Interested parties and surrounding property owners within 500 feet have been notified of the public hearing and notice of the hearing has been published in a newspaper of general circulation. The site has been posted since June 23, 2005. There have been a number of opportunities for citizens to be involved in the decision making process, including the approval of the subdivision request.

Policy 10.1.1: The City shall review each of the following services as to adequate capacity, or such services to be made available, to serve the parcel if developed to the most intense use allowed, and will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard. The services are: water, sewer, drainage, streets, police, and fire protection.

This policy requires adequate service capacity delivery to annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. The subject parcels are part of a subdivision that was reviewed and approved based on the availability of public services. Services to the subject parcels have been addressed and conditioned within the review of the Mountain View Estates subdivision approval. This policy is satisfied.

If required by an adopted capital improvements program ordinance, the applicant shall sign and record with Washington County a nonremonstrance agreement regarding the following: The formation of a local improvement district (L.I.D.) for any of the following services that could be provided through such a district. The extension or improvement of the following: water, sewer, drainage and streets. The formation of a special district for any of the above services or the inclusion of the property into a special service district for any of the above services.

No L.I.D.'s were required for the subject parcels or subdivision approvals. All public infrastructure listed above have been conditioned to be constructed and the costs are to be borne by the applicant.

The City shall provide urban services to areas within the Tigard urban planning area or with the urban growth boundary upon annexation.

The City of Tigard has an urban services agreement with Washington County for those areas within the City's urban growth boundary. This policy has been complied with.

Policy 10.1.2: approval of proposed annexations of land by the city shall be based on findings with respect to the following: the annexation eliminates an existing "pocket" or "island" of unincorporated territory; or the annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the city; the police department has commented upon the annexation; the land is located within the Tigard urban planning area and is contiguous to the city boundary; the annexation can be accommodated by the services listed in 10.1.1(a).

This Policy pertains to boundary criteria for annexations. The proposed annexation will not eliminate an existing "pocket" or "island" of unincorporated territory; however the annexation will also not create an irregular boundary making it difficult for police to determine whether a particular parcel is in or outside the city. The proposed annexation will incorporate the entire subdivision boundary for Mountain View Estates. The police department has commented on the proposed annexation request and did not voice any objections. The land is within the Urban Services Area inside the Urban Growth Boundary and is bordered by the city limits on the northern side. Services to the subject property are addressed above. This policy is met.

Community Development Code

Section 18.320.020: This Section addresses approval standards for annexation proposals:

All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area;

Adequate service (water, sewer, drainage, streets, police, and fire protection) capacity is available to serve the annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. Additionally, the adequacy and availability of services was reviewed as part of the Mountain View Estates subdivision approval. Therefore, this policy is satisfied.

The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

Applicable Comprehensive Plan policies have been addressed above. Ordinance provisions were addressed during the individual reviews of the Mountain View Estates subdivision. This standard has been met.

Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

The subject property is in the Urban Service Area and is zoned R-7 medium density residential, pursuant to the City of Tigard's Urban Services Intergovernmental Agreement. The R-7 zoning designation is consistent with the original Washington County's R-6 zoning designation as shown in the table below. The City's zoning was adopted by the County with the City's R-7 zoning district. Therefore, the property does not need to be rezoned upon annexation. According to Section 18.320.020.C, the City's Comprehensive plan and zoning designations occur automatically and concurrently with the annexation.

Conversion table. Table 320.1 summarizes the conversion of the County's plan and zoning designations to City designations which are most similar.

**TABLE 320.1
CONVERSION TABLE FOR COUNTY AND CITY PLAN AND ZONING DESIGNATIONS**

Washington County Land Use Districts/Plan Designation	City of Tigard Zoning	City of Tigard Plan Designation
R-5 Res. 5 units/acre	R-4.5 SFR 7,500 sq. ft.	Low density 1-5 units/acre
R-6 Res. 6 units/acre	R-7 SFR 5,000 sq. ft.	Med. density 6-12 units/acre
R-9 Res. 9 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-12 Res. 12 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-15 Res. 15 units/acre	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
R-24 Res. 24 units/acres	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
Office Commercial	C-P Commercial Professional	CP Commercial Professional
NC Neighborhood Commercial	CN Neighborhood Commercial	CN Neighborhood Commercial
CBD Commercial Business District	CBD Commercial Business District	CBD Commercial Business District
GC General Commercial	CG General Commercial	CG General Commercial
IND Industrial	I-L Light Industrial	Light Industrial

Metro

Metro 3.09 requires the additional standards to be addressed in annexation decisions, in addition to the local and state review standards. These are addressed and satisfied as discussed below:

Consistency with the directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;

The processing has been done consistent with applicable Urban Service Provider agreements.

Consistency with directly applicable provisions of urban planning or other agreement, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;

The process required by the Development Code and Comprehensive Plan is consistent with the Urban Planning Agreement for annexations.

Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;

This has been discussed previously in this report and, as discussed, this criterion is satisfied.

Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plans;

Because the Development Code has been amended to comply with applicable Metro functional plan requirements, by complying with the Development Code and Comprehensive Plan, the annexation is consistent with the applicable Functional Plan and the Regional Framework plan.

Whether the proposed changes will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;

The proposed annexation will not interfere with the provision of public facilities or services because it is adjacent to existing city limits and services, and the delivery of those services was anticipated as part of the urban services agreement which is intended to promote the timely, orderly, and economic delivery of public facilities and services.

If the proposed boundary change is for annexation of territory to Metro, a determination by Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criterion for approval;

The subject property is already within the Metro boundaries.

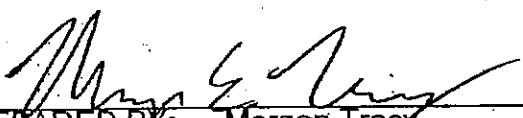
Consistency with other applicable criteria for the boundary change in question under state and local law.

Consistency with other applicable criteria has been discussed previously in this report.

SECTION V. AGENCY COMMENTS

Washington County Department Of Land Use & Transportation, Verizon, Qwest Communications, Northwest Natural Gas, Beaverton School District #48, Comcast Cable Corporation, Portland General Electric, Metro Area Communications, Cleanwater Services, Metro Land Use & Planning, Tualatin Hills Park & Rec. District, Tualatin Valley Water District, Tualatin Valley Fire & Rescue, and Tigard/Tualatin School District 23J have had the opportunity to review the proposal and have offered no objections.

BASED ON THE FINDINGS INDICATED ABOVE, PLANNING STAFF RECOMMENDS APPROVAL OF ZONE CHANGE ANNEXATION (ZCA) 2004-00004 - MOUNTAIN VIEW ESTATES ANNEXATION.


PREPARED BY: Morgan Tracy
Associate Planner

July 28, 2005
DATE


APPROVED BY: Richard Bewersdorff
Planning Manager

July 28, 2005
DATE

SUPPLEMENTAL FINDINGS
CONCERNING COMPLIANCE WITH ORS CHAPTER 222
ZCA2004-00004 – Mountain View Estates

The City is proceeding with this annexation without an election in the territory to be annexed under ORS 222.125. That statute provides:

The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

The Council finds:

1. There is one owner of the two properties that are in the territory proposed for annexation under ZCA2004-00004. The owner has consented in writing to annexation to the City of Tigard and those consents have been duly filed with the City.
2. According to County voter registration information, there are no current registered voters residing in the territory to be annexed under ZCA2004-00004. The City had received signed consents to annexation to the City of Tigard from all four previous registered voters.
3. Because the City has written consent of all owners of land and there are no currently registered voters in the territory proposed to be annexed under ZCA2004-00004, the City may proceed with annexation of that territory without a vote in the territory to be annexed, pursuant to ORS 222.125, because it has the consent of all owners and there are no electors.

FINDINGS IN RESPONSE TO COMMENTS

At the August 9, 2005, the City Council received testimony from various persons regarding four proposed annexations. The Council allowed all parties until August 16 to submit additional written information. This document sets out the City's findings on the legal and factual issues raised by the testimony and written submissions. The Council received a request to reopen the record to allow a response to the post-hearing written submissions and allowed until August 30 for persons to raise new issues relating to the new testimony, as provided by ORS 197.763(6)(c) and 197.763(7). This document sets out the City's findings on the legal and factual issues raised by the testimony and written submissions.

1. After the Council allowed additional time to raise new issues in response to new evidence submitted in the post-hearing written submissions, the City received two submissions, both e-mails sent by Julie Russell. Neither of those submissions raises new issues because all issues presented in her e-mails had been raised previously. Furthermore, neither of the submissions addresses new evidence submitted after the close of the oral hearing, but simply contain further argument on the same factual and legal issues she and other opponents had raised in her earlier submissions. Therefore, neither are proper submissions under ORS 197.763(6)(c) and 197.763(7).

Issues Raised By More Than One Person

HB 2484

2. Some people testified that House Bill 2484 (which has been enacted into law) either prevents the City from approving these annexations or demonstrates a legislative intent that a vote is required in any area to be annexed. House Bill 2484 is straightforward. It amends ORS 195.215, to make it clear that "annexation plans" under ORS Chapter 195 must be approved both by a majority of voters in the territory to be annexed and by a majority within the City.
 - A. HB 2484 does not apply to the annexations being considered by the City because HB 2484 applies only to annexation plans under ORS Chapter 195, and the annexations before the City do not involve annexation plans or ORS Chapter 195. They are annexations under ORS Chapter 222, in particular ORS 222.125. HB 2484, even if it were effective, would not apply to or affect these annexations.
 - B. HB 2484 requires a separate vote in the area to be annexed for annexation plan annexations. However, requiring a vote in the area to be annexed would be a meaningless and futile act for areas in which there are no registered voters. There are no registered voters in the area to be annexed in Mountain View Estates annexation (ZCA2004-00003) or in the Alberta Rider/Summit Ridge annexation area (ZCA2005-00003). All of the registered voters in the Arlington Heights 3 (ZCA20005-00001) and Wilson Ridge (ZCA 2005-00002) annexation have consented to annexation.

HB 2722

3. HB 2722 (which has been enacted into law) withdraws the right of cities to veto formation of new cities within three miles of their borders. Some opponents of annexation have argued that the intent of this bill is that the wishes of citizens in the affected areas are respected.
 - A. HB 2722 does not apply to annexations.
 - B. The affected areas are the areas to be annexed. Two types of persons have interests in the affected areas – those who own property and those who reside there. All owners of all properties to be annexed, and all voters in areas to be annexed have consented to the annexation. No owner or resident in the areas to be annexed has indicated that they do not wish annexation.

SB 877

4. SB 877 (which has been enacted into law) has three major effects. One is that it limits the ability of the City of Beaverton to annex “islands” of territory surrounded by that City. The second effect is that it requires a majority vote in the territory to be annexed by means of an annexation plan under ORS Chapter 195. The third effect is to prohibit the annexation of certain types of industrial property without the consent of the owner.
 - A. The provisions affecting only the City of Beaverton do not apply to the City of Tigard.
 - B. None of the proposed annexations are “island” annexations, although an “island” is created by the Alberta Rider School/Summit Ridge annexation.
 - C. The annexations are not annexation plan annexations and are not subject to ORS Chapter 195.
 - D. The annexations are not of industrial land and are not the type of land that cannot be annexed without the consent of the owner. The City has the consent of all owners of all land being annexed.

Voluntary or Coerced Consents

5. Some persons argued that the consents are not valid because they were coerced.
 - A. None of the people who provided consents stated they were coerced. Those who testified that the consents were coerced did not specify which persons were coerced. Several persons representing property owners (Tom Weber, John Marquart, Sean Foushee, and Al Jeck) testified orally and/or in writing that consents were voluntary and not coerced. The City Council finds that there is no evidence that any specific individual was coerced into consenting to annexation.

CITY COUNCIL FINDINGS -- ANNEXATIONS

If any person who provided consents believed that the consents were coerced, it is likely that the person would have appeared at the hearing. The Council finds the testimony of Tom Weber, John Marquart, Sean Foushee and Al Jeck to be more persuasive than the evidence of those claiming coercion because the named individuals were in a position to know whether the consents were voluntary or coerced and those who claimed that the consents were coerced did not have personal knowledge regarding the consents. The Council concludes that none of the consents were coerced.

- B. ORS 222.115 specifically authorizes contracts between a city and a landowner relating to the extraterritorial provision of service in which the landowner consents to annexation. The fact that the City requires a consent to annexation in return for a contract for the extraterritorial provision of service is explicitly authorized by statute and does not constitute coercion. The City provides planning and building inspection services extraterritorially and may require consents to annexation in order to provide those services.
- C. ORS 222.175 recognizes that cities may solicit consents to annexation. The fact that a City seeks consents does not mean that they were coerced and does not invalidate the consents.

Consents To Annexation In Connection With A Land Use Proceeding

- 6. Some opponents argued that some of the consents were required in connection with land use proceedings, and the City cannot require consents to annexation in order to process a land use application or as a condition of a land use approval.
 - A. For consents that were provided in connection with a land use approval, the time to challenge the City's authority to impose the consents was during the land use process. In all but one of the cases, the land use process has been completed and the appeal period has passed. The requirement to provide a consent to annexation can no longer be challenged in those cases.
 - B. None of the persons who provided consents in connection with land use proceedings have in any way challenged the consents or the requirement to provide the consents. To the contrary, some of them have expressly testified that they affirmatively desire that their properties be annexed to the City of Tigard. The applicant for the one land use process that has not been completed (Arlington Heights 3) has testified that the consent to annex that territory was voluntarily provided, and the City Council finds that the consent in that case was voluntary.

General Concern For The Bull Mountain Area

- 7. Some opponents stated concerns related to the Bull Mountain area in general and to their property in unincorporated areas of Bull Mountain. Some of them argued that the proposed annexations should not proceed because of the negative vote when the Bull

CITY COUNCIL FINDINGS -- ANNEXATIONS

Mountain Annexation Plan was presented to the voters in the area to be annexed.

- A. The rights and interests of the owners and registered voters in the areas proposed for annexation are recognized by statute. The statutes do not create a legally protected interest for other persons.
- B. These annexations are different from the annexation plan presented to the voters. These annexations are property-specific annexations under ORS Chapter 222. The City and the annexation applicants are not requesting approval of an annexation plan. The rejection of an annexation plan under ORS Chapter 195 does not prevent later annexation of specific territory under a different annexation statute.

"Double Majority" Vote

- 8. Some opponents of the annexation argued that a "double majority" vote (a separately tabulated vote in the City and in the area to be annexed) is required.
 - A. A "double majority" vote is or will be required for annexation plans under ORS Chapter 195. However, for annexations under ORS Chapter 222, votes in the City are not required unless required by City charter or ordinance, and votes in the area to be annexed are not required if certain criteria are met. A vote in the area to be annexed is not required if all of the owners of all of the land and a majority of the electors in the area to be annexed, if any, consent to the annexation. ORS 222.125. The City Charter and Code do not require a vote within the City.
 - B. As to each of the annexations, the City has received the consents of all of the owners of all of the land. The City has also received the consents of all of the registered voters in each area that has registered voters. These annexations are not annexation plan annexations under ORS 195, so the double majority requirement does not apply. The City is not required to hold a vote in any of the territories to be annexed, either because there are no electors in the areas to be annexed or because the City has the consent of a majority of the electors in those areas.

"Islands" Of Unincorporated Areas Surrounded By The City

- 9. Some opponents argued that these annexations create islands of unincorporated areas surrounded by the City. They also note that the City may later annex those islands without consent of owners or electors.
 - A. There is no legal prohibition on the creation of islands. The City must consider annexation applications that create islands under applicable standards. While the Council must consider whether the borders created by an annexation are so irregular as to potentially cause problems with the provision of police services,

the police department accepts these boundaries as being acceptable and not causing confusion for the provision of police services. The police department has provided written statements that they can provide services. The Council finds that the boundaries are not irregular to the extent they create confusion in the provision of police services.

- B. The City does have the authority to annex islands, but is aware that the statutory authority to annex islands may be withdrawn, as it has been withdrawn from one other city and from certain types of land. The possibility of a future annexation proceeding is not an applicable standard or criterion in deciding whether to approve these annexations.

Regular Boundaries

- 10. Several persons commented that the annexations will not result in a regular boundary.

- A. The applicable standard is Comprehensive Plan Policy 10.1.2, which provides:

Approval of proposed annexations of land by the City shall be based on findings with respect to the following:

- a. The annexation eliminate an existing "pocket" or "island of unincorporated territory; or
- b. The annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City;
- c. The police department has commented on the annexation;
- d. The land is located within the Tigard Urban Planning Area and is contiguous to the City boundary;
- e. The annexation can be accommodated by the services listed in 10.1.1(a).

- B. Policy 10.1.2 is complied with if either (1) subsection a or (2) subsections b through e are met. These annexations comply with subsections b through e. The annexation boundary will not make it difficult for the police in emergency situations to determine whether the parcel is within or without the City. The police department has commented on the annexation and stated that it is capable of providing service. All areas proposed for annexation are within the Tigard Urban Planning Area and are contiguous to the City. The services listed in 10.1.1(a) (water, sewer, drainage, streets, police and fire protection) can be provided to the areas to be annexed – the City and other responsible service providers have capacity to provide service to the areas to be annexed. The

Council finds that the annexations provide for a reasonable extension of the City's boundaries.

Individual Comments – Testimony at Hearing

Les and Ellen Godowski

11. The Godowskis argued that the annexations will also prevent certain areas from creating their own cities or annexing to King City.
 - A. The City has no obligation to refrain from annexing territory based on the possibility that some other city may be incorporated in the area at some point in the future.
 - B. All applicable plans and intergovernmental agreements that address urbanization or the provision of urban services designate Tigard as the City that will annex and/or provide urban services to the areas being annexed.

Charles Radley

12. Charles Radley argued that the annexations would violate *Dolan v. City of Tigard* and that there is no “essential nexus.” Mr. Radley also provided a written document.
 - A. *Dolan v. City of Tigard* applies only to cases in which the City exacts property from a property owner at the time of a land use approval. *Dolan* does not apply to annexations.
 - B. To the extent the Mr. Radley is arguing that the City could not require the property owners to consent to annexation as a condition of land use approval, that challenge is too late. The land use approvals are final and cannot be collaterally challenged. Furthermore, Mr. Radley was not the applicant or a landowner in any of the land use cases and lacks standing to challenge conditions that have been accepted by the applicants.
 - C. The “essential nexus” requirement is imposed on exactions by the *Nollan v. California Coastal Commission* case. Like *Dolan*, the case applies only to exactions at the time of land use approvals, not to annexations. To the extent that Mr. Radley is challenging conditions of approval in the previous land use cases, that challenge is too late, and Mr. Radley lacks standing to make the challenge.
 - D. The document that Mr. Radley provided is an excerpt discussing the requirement, under Rhode Island law, that a building official must issue a building permit that meets the requirements of the building code. Rhode Island law concerning

building officials is not relevant to any issue regarding these annexations. If Mr. Radley is attempting to argue that the City cannot require a consent to annexation, any requirement regarding consents to annexations by the City are imposed in the context of a land use proceeding. The City has more authority and more discretion in land use proceedings than in issuing building permits.

Julie Russell

13. In addition to issues raised by others, Ms. Russell claimed that the map included with the notice of annexation was inaccurate as to which areas are included within the City limits and which areas are outside the City limits. Ms. Russell argued that the City's process violated Comprehensive Plan Policies 2.1.1. and CDC 18.320.020. Ms. Russell stated dissatisfaction with the proposed zoning.

- A. The maps provided with the notice were accurate. They showed the location of the properties being annexed and accurately showed areas within the city limits by a shaded yellow area. There is no requirement to provide a map with the notice of the annexation hearing. Even if there was some inaccuracy, the maps provided sufficient information to advise of the location of the properties to be annexed and their relationship to the City. The City provided notice in compliance with all applicable requirements. In the event that some person may have failed to receive notice, failure of a person to receive notice does not invalidate the notice, which was properly provided.
- B. Comprehensive Plan Policy 2.1.1 provides: "The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process." This policy is not an approval standard or criterion for an annexation application. The City's land use regulations have been acknowledged, and those regulations provide the process, including citizen involvement, for considering land use applications. That process includes notice and a hearing, and the City provided notice and a hearing, as required by the CDC. Compliance with the acknowledged regulations demonstrates compliance with the Comprehensive Plan policies implemented by the regulations. Citizens, including Ms. Russell, have had the opportunity to be involved in process. The process of necessity works differently in a quasi-judicial land use process than in a legislative process.

C. CDC 18.320.020 provides:

18.320.020 Approval Process and Standards

- A. Approval Process. Annexations shall be processed by means of a Type IV procedure, as governed by Chapter 18.390 using standards of approval contained in Subsection B2 below.
- B. Approval Criteria. The decision to approve, approve with

modification, or deny an application to annex property to the City shall be based on the following criteria:

1. All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area; and
 2. The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.
- C. Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.
- D. Conversion table. Table 320.1 summarizes the conversion of the County's plan and zoning designations to City designations which are most similar.

The City used a Type IV approval process. The City has capacity to provide all required services to the area to be annexed, and the applicable Comprehensive Plan Policies, including those in Chapter 10, have been satisfied. The properties being annexed already have City comprehensive plan and zoning designations, that have been adopted and imposed by the County. Ms. Russell specifically argued that the City lacks parks capacity in the area. However, the City has sufficient parks capacity throughout the City to provide service to its residents, including residents in the areas being annexed. The services listed in the Comprehensive Plan, water, sewer, storm sewer, streets, police and fire protection, are the essential services that must be available, and those services will be available to the newly annexed areas. Ms. Russell questioned the adequacy of the street system. The City Council finds that the street system is adequate to provide service and will remain adequate. If the properties are not annexed, they could still be developed consistent with the County zoning, which is the same as City zoning, so whether the properties are annexed or not does not affect the impact on the street system.

- D. The areas to be annexed all have existing City zones that were established consistent with Table 320.1. The zoning is consistent with the Comprehensive Plan and applicable Community Development Code provisions.

Scott Miller

14. In addition to issues addressed in the "Issues Raised By More Than One Person" section of these findings, Mr. Miller stated a concern with an increase in taxes. Mr. Miller also argued that the consents received by the City are not consents.
- A. Mr. Miller does not own property being annexed. His property is outside the area proposed for annexation. His taxes will not increase as a result of the annexation. The property owners in the area to be annexed have consented to the annexation. Whether taxes may increase is not an applicable standard or criterion in deciding an annexation.
- B. For each of the annexations, the City has either the written consent of the property owners or a petition from the property owners to initiate the annexation. All are valid consents.

Lisa Hamilton Treick

15. In addition to issues address in the "Issues Raised By More Than One Person" section of these findings, Ms. Hamilton Treik argued that Measure 37 gives property owners rights that are violated by these annexations.
- A. Ms. Hamilton Treik does not own property that will be annexed by these annexations. All owners of property being annexed have consented to these annexations. The property owners or their representatives who testified expressly stated that they voluntarily consent to the annexations. One of them, Tom Weber, stated that he actively sought annexation to Tigard because of the value it brings to his property. Measure 37 is not an applicable standard or criterion for annexation.
16. Ms. Hamilton Treik also argued that the City has no authority to condition land use approvals or acceptance of land use applications on a consent to annexation.
- A. In addition to Findings 6 and 7, the various agreements with the County and other urban service providers, including the Urban Services Intergovernmental Agreement and Tigard Urban Service Agreement, anticipate that the City will provide planning services and will ultimately annex Tigard's urban service area. Requiring annexation is not inconsistent with those agreements. Urban Service Agreement Section I.D provides that the City shall endeavor to annex certain areas, including all areas currently proposed for annexation. Requiring annexation consents effectuates this provision of the Urban Service Agreement. The Urban Services Intergovernmental Agreement gives Tigard all land use decision-making authority over the area to be annexed. Land use authority

includes the authority to impose conditions. The City has the authority to impose a condition of approval requiring consent to annexation when it receives a land use application for a property outside the City.

Individual Comments – Post-Hearing Written Submissions

Julie Russell

17. Ms. Russell again discussed general opposition to annexation in the Bull Mountain area, HB 2484, SB 887, Comprehensive Plan Policies 2.1.1 and 10.1.2, and CDC 18.320.020. The above findings address those arguments.
18. Ms. Russell also argues that the zoning is wrong and inconsistent with the Bull Mountain Community Plan. The areas have all been rezoned by the County and the zoning being applied is the zoning required by CDC 18.320. Furthermore, as demonstrated in the written testimony of John Marquart, there is little or no practical difference between Washington County R-6 and Tigard R-7 zoning, as applied.
19. Ms. Russell argues that not everyone who was entitled to receive notice actually received notice. The City provided notice as required by applicable regulations. While it is possible that some persons did not receive notice, the City complies with the notice requirements.
20. Ms. Russell complains about possible effects on other service providers. The City has not received any negative comments from other service providers. All service providers in the area have agreed that the area being annexed will be annexed to Tigard. Services will be provided as agreed to in the Urban Services Agreements entered into by the City and other service providers.
21. Ms. Russell argues that the annexation will interfere with the orderly and economic provision of public facilities and services. However, her argument appears to be that services can be provided without annexation. That does not mean that annexation will disrupt or interfere with service provision. The agreements between the service providers will ensure orderly and economic provision of services.
22. Ms. Russell argues that the Alberta Rider School property should not be annexed. None of her arguments relate to any applicable standard or criterion.
23. Ms. Russell opposes the Summit Ridge annexation as non-contiguous. The Summit Ridge area being annexed will be contiguous with the City on annexation.
24. Ms. Russell objects to the Annexation of Arlington Heights 3 on the grounds that the annexation will cause annexation to a homeowners association. That argument does not relate to any applicable standard or criterion. Participation in a homeowner's association is a matter of contract between the parties and unrelated to a City's authority to annex. Ms. Russell also argues that the City cannot annex only part of a subdivision.

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No applicable standard or criterion prohibits annexation of part of a subdivision. Furthermore, Arlington Heights 3 is a separate subdivision from Arlington Heights 1 and 2.

LaVelle and Marie Day

25. The Days object to the annexation on the grounds that the annexation may interfere with efforts to annex to King City or to create a new city. This argument does not relate to any applicable criterion or standard. None of the Days' other arguments are based on applicable standards or criteria.

Jackie and Gary Kisling

26. The Kislings raise issues related to HB 2484 and HB 2722. Those bills are addressed in the above findings.

Henry Kane

27. Mr. Kane makes arguments against island annexations. None of the annexations are island annexations.

Lisa Hamilton-Treik and Tom Treik

28. Ms. Hamilton-Treik and Mr. Treik oppose the process in which the hearings on four annexations were combined as causing hardship on those who wish to appeal. Even if the hearings had not been combined, the hearings could have been, and most likely would have been held at the same meeting. Therefore, the appeals would have all been due at the same time. Combining the hearings allowed people to state their objections a single time so as to avoid multiple repeated testimony. All persons were given a full opportunity to address any issues related to any of the four annexations.
29. They also object to the boundaries as being irregular and question the voluntariness of the consents. These issues are addressed above.
30. They also oppose the transfer of Traffic Impact Fees to Tigard's TIF accounts. That is not a relevant issue and does not relate to any applicable standard or criterion.

Philip E. Decker

31. Mr. Decker opposes the annexations as not being contiguous. No property being annexed will be separated from the City by any intervening unincorporated territory. The annexations are of contiguous property.
32. Mr. Decker argues that ORS 222.115 allows annexation contracts only for contiguous parcels. ORS 222.115 does not require that property be contiguous at the time an annexation contract is signed. One purpose of ORS 222.115 is to allow properties that

are not contiguous to consent to annexation so that they can receive urban services immediately and be annexed later when intervening properties annex. The contiguity requirement applies only when the annexation becomes effective.

33. Mr. Decker argues that the areas being annexed are irregularly shaped. The shape of the area being annexed is not an issue.
34. Mr. Decker argues that previous annexations were improper. The previous annexations are final and have not been challenged. They cannot be collaterally attacked at this time.

Comments In Support

35. After the hearing, the City received several written comments in support of the proposed annexations, including statements from Sean Foushee, on behalf of the applicants for the Mountain View Estates, from John Marquart on behalf of the applicant for the Wilson Ridge annexation, and from Tom Weber, on behalf of the owners of the Arlington Heights 3 property, all of whom stated that the annexation applications were voluntary. Mr. Marquart and Mr. Weber addressed other issues, strongly supporting the annexations of their respective areas.

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